

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-542

DEUTSCHE BANK NATIONAL TRUST COMPANY, trustee,¹

vs.

JUAN M. COFIELD & another.²

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendants appeal from a judgment of the Land Court, equitably assigning to the plaintiff a mortgage that both encumbers property the defendants own and also secures a note held by the plaintiff.³ For substantially the reasons explained by the Land Court judge we discern no error, and affirm.

¹ For Ameriquest Mortgage Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-RI.

² Julia Cofield.

³ More than ten days following entry of judgment on May 25, 2017, and also following the defendants' filing of a notice of appeal, the defendants served a motion to vacate judgment, pursuant to Mass. R. Civ. P. 60 (b) (4) and (6), 365 Mass. 828 (1974), saying that they withdrew their earlier notice of appeal but were "explicitly reserving their right to an appeal of a later judgment and order of the instant case." Following the denial of their rule 60 (b) motion on January 2, 2018, the defendants on January 31, 2018, filed a notice of appeal from the order denying that motion as well as the judgment entered on May 25, 2017. An appeal from an order denying a motion for relief from judgment under rule 60 (b) ordinarily does not bring the underlying judgment before the Appeals Court, see Nolan v. Weiner, 4 Mass. App. Ct. 800 (1976), other than a claim that the

On the original summary judgment record, it was undisputed that the plaintiff holds the original note made by the defendants and secured by the mortgage at issue. The note is indorsed in blank. As the judge observed, "The 'bearer of a note [i]ndorsed in blank is presumed to be [a] holder in due course.' Parker v. Roberts, 243 Mass. 174, 177 (1922). A mortgagee holds legal title to the mortgaged property in trust for the noteholder, and the noteholder possesses an equitable right to demand and obtain an assignment. Culhane v. Aurora Loan Servs. of Nebraska, 708 F.3d 282, 292 (1st Cir. 2013)." The plaintiff accordingly was entitled to the relief awarded by the judge, in the form of an order equitably assigning the mortgage to it.⁴

The judge also committed no abuse of discretion or error of law in denying the defendants' motion to vacate judgment, pursuant to Mass. R. Civ. P. 60 (b) (4) and (6). By virtue of its possession and ownership of the note, the plaintiff has standing to seek an equitable assignment of the mortgage that

underlying judgment is void, see Gianareles v. Zegarowski, 467 Mass. 1012, 1014 n.3 (2014), and the January 31, 2018, notice of appeal was untimely as to the judgment entered on May 25, 2017. See Mass. R. A. P. 4 (a) (1) and (2), as appearing in 481 Mass. 1606 (2019). We nonetheless address the merits of the defendants' claim concerning the underlying judgment, as it provides context for the question raised by their challenge to the order denying their rule 60 (b) motion.

⁴ The nominal holder of the mortgage, as of record, has been dissolved, making an actual assignment impossible.

secures the note. The defendants' arguments with respect to whether the plaintiff holds the original note, which were raised for the first time in their motion to vacate judgment, are unavailing. Accordingly, the judgment is not void for want of subject matter jurisdiction.

The defendants' challenges to the enforceability of the note and mortgage, based on the Uniform Commercial Code and alleged nonconformity with requirements of the pooling and servicing agreement, do not affect the plaintiff's entitlement to an order transferring to it record title to the mortgage, based on its possession of the note indorsed in blank.⁵ The defendants remain free to assert any defenses they may claim to

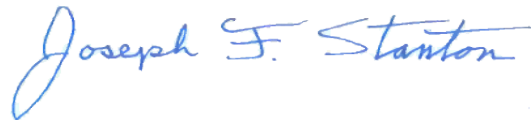
⁵ There is likewise no merit to the defendants' contention that the plaintiff is estopped from seeking equitable relief under the doctrine of clean hands. The improprieties alleged by the defendants relate to any attempted enforcement of the note and mortgage, and not to the plaintiff's legal title to the mortgage itself.

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The judgment is affirmed, as is the order denying the motion to vacate judgment.

So ordered.

By the Court (Green, C.J.,
Maldonado & Hand, JJ.⁶),



Clerk

Entered: July 26, 2019.

⁶ The panelists are listed in order of seniority.